

PROVO RIVER WATER USERS ASSOCIATION
DEER CREEK PROJECT

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APR 28 1993

WATER RIGHTS
SALT LAKE

April 26, 1993

Roland Robison, Regional Director
Upper Colorado Region
Bureau of Reclamation
P. O. Box 11568
Salt Lake City, Utah 84147

Dear Mr. Robison:

This letter is in response to the letter dated March 23, 1993, directed to you from the Weber River Water Rights Committee (the "Rights Committee") expressing its objections to what it characterizes as . . . "the intended modification of the operating criteria of the Provo River Project, specifically the storage in Deer Creek Reservoir". We respectfully suggest that the stated objections of the Rights Committee are premature and without foundation.

The Rights Committee focuses on the March 15, 1993 Jordanelle/Deer Creek Interim Operating Agreement meeting conducted by Reclamation as the primary basis for its concerns and objections. Prior to that meeting, the Central Utah Water Conservancy District circulated a March 9, 1993 draft Outline of Interim Operating Agreement for Jordanelle and Deer Creek Reservoirs, which the Rights Committee apparently considered as a proposed revision to the operating criteria for the Provo River. The March 9, 1993 draft was prepared by the Central District on its own without consulting with this Association and we disagree with many of the concepts outlined therein. Needless to say, it does not reflect our views of the contents of an acceptable operating agreement if one can be achieved.

At the outset, it should be emphasized that the Weber River Water Commissioner has the authority and responsibility to regulate and distribute the waters of the Weber River in accordance with existing water rights. We fully expect that the Water Commissioner will see to it that the prior rights on the Weber River are fully protected. Likewise, we fully expect that the

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Water Commissioner will administer both the Provo River Project Weber River water rights and the Weber Basin Project water rights in accordance with their respective priorities.

The Rights Committee suggests that it is for Reclamation to allocate the project waters available among the Weber River Project, Provo River Project, Weber Basin Project and Central Utah Project presumably since all are Federal Reclamation Projects and legal title to the respective water rights stand in the name of the United States. Each of those projects have their own separate and distinct water rights, and while legal title stands in the name of the United States, Reclamation's ownership in those water rights is at most nominal and the beneficial interests are vested in the repayment entities and their stockholders or inhabitants. Since the management and operation of those projects (except for the Central Utah Project) have been transferred to the respective repayment entities, we believe that it is beyond the authority or supervisory role of Reclamation to allocate the waters available among the various projects.

This Association wholly disagrees with the notion that its Weber River water rights somehow should be limited to historical quantities diverted with the facilities in existence at the time of proof. Nowhere in the Rights Committee letter does it suggest that the Weber River Project or the Weber Basin Project water rights should be likewise limited. It is our firm position that under Utah water law, this Association has the right to improve the efficiency of its water system and is entitled to make the most efficient use of its water so long as it diverts only that volume of water authorized under its water rights.

Furthermore, this Association does have the right to elect from which of its three sources (Weber River, North Fork of the Duchesne River and Provo River) it may call for the waters which the respective Water Commissioners determine is available under the Provo River Project water rights. This Association cannot and will not give up that flexibility. However, in making its election, this Association will cooperate as it has for the past 40 years, with the water right owners on those respective sources.

The Rights Committee poses the question as to why the Central District invested substantial funds in the rehabilitation and automation of the Weber Provo Diversion dam and canal. The fact is that this Association sought financial assistance from the Central District since the cost of the improvement was beyond

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the Association's present means. To obtain that financial assistance, the Association was willing to amend the September 22, 1989 Memorandum of Understanding relating to minimum flows on the Provo River, to effectively cancel out some 6716 acre-feet of minimum flow water in Utah Lake, thereby saving the Central District approximately \$335,800 in purchases of water to replace the approximately 6716 acre-feet. That was the principal incentive to the Central District and we so advised the Rights Committee on at least two occasions prior to its March 23, 1993 letter.

The Rights Committee misstates the past operation of Deer Creek Reservoir as being supplied first by ". . . water available out of the Provo River water which would otherwise flow past Deer Creek and downstream and then to the extent necessary, diversion of Duchesne and Weber River water to augment and supplement those flows to allow Deer Creek to fulfill its storage rights". Prior to the 1986 Interim Deer Creek/Strawberry Exchange Agreement, the opposite was true. The Provo River Project relied primarily on the diversions from the Weber River and North Fork of the Duchesne River as augmented by waters available from the Provo River over and above prior rights and particularly the storage rights in Utah Lake. Since 1986 this Association has stored substantial quantities of Provo River water as a result of replacements to Utah Lake from Strawberry Reservoir by the Central District under the Interim Deer Creek/Strawberry Exchange. Upon its termination, emphasis will be placed on more fully utilizing the Provo River Project water rights on both the Weber River and North Fork of the Duchesne River as was done prior to 1986, and particularly in view of the State Engineer's Utah Lake Management Plan.

The Rights Committee notes that even in recent years of severe drought, there has never been a shortage of water to the Deer Creek Reservoir storage and that last year Deer Creek Reservoir spilled without altering the historical available water delivery from the Weber River. During those years, the Association diverted and stored all of the Weber River water made available to it by the Weber River Water Commissioner. However, Deer Creek Reservoir filled (except in 1992) primarily from the storage of Provo River water as a result of the replacement of water in Utah Lake under the Interim Deer Creek/Strawberry Exchange. Otherwise, such waters could not have been stored in Deer Creek Reservoir.

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The modification and automation of the Weber Provo Diversion dam and canal should enable this Association to divert more of the fluctuating surplus flows of the Weber River and thereby more fully utilize the Provo River Project Weber River water rights. While we anticipate that more Weber River water will be diverted than in prior comparable years, it is our firm position that any such increased diversions clearly fall within the Provo River Project Weber River water rights and we have so advised the Rights Committee in our prior meetings. It remains to be seen whether the foregoing will result in a reduced Provo River Project demand on the Provo River with the incidental end result that more Provo River water might be available for storage in Jordanelle Reservoir under the Central Utah Project water rights. We suggest that the foregoing water rights and the Utah State Engineer's Utah Lake Management Plan will have a far greater impact on the future Provo River Project demands on the Provo River.

Contrary to the expressed frustrations of the Rights Committee, we do not envision a dramatic alteration of water flows. Rather, we see an increased efficiency in the regulation and distribution of the Weber River waters by the Weber River Water Commissioner. The end result should be a better utilization of the Provo River Project water rights for Provo River Project purposes without infringing on the water rights of those represented by the Rights Committee. This Association will fully cooperate in achieving that objective.

We trust that the foregoing clarifies the position of this Association. If you have any questions thereon, please advise.

Sincerely yours,



N. P. Sefakis, President

NPS/db

cc: Bruce Barrett, Projects Manager, Bureau of Reclamation
✓ Robert L. Morgan, P.E., Utah State Engineer
Charles F. Black, Jr., Chairman, Weber River Water
Rights Committee
Ivan W. Flint, General Manager, Weber Basin Water
Conservancy District
Don A. Christiansen, General Manager, Central Utah Water
Conservancy District

COPIES ALSO SENT TO:

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